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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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10 Lion Electric Company,
11 Plaintiff,
12 v.
13 Nikola Corporation,
14 Defendant.
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No. CV-23-0372-PHX-DGC
ORDER

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17 The parties have filed a proposed protective order, but no motion for its approval
18 and no explanation of why it is warranted in this case. Doc. 40. The parties seek protection
19 to facilitate the exchange of sensitive business information during discovery. *Id.*

20 “It is well-established that the fruits of pretrial discovery are, in the absence of a
21 court order to the contrary, presumptively public.” *San Jose Mercury News, Inc. v. U.S.*
22 *Dist. Ct. – N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999) (citations omitted).
23 “Rule 26(c) authorizes a district court to override this presumption where ‘good cause’ is
24 shown.” *Id.*; see *Oliner v. Kontrabecki*, 745 F.3d 1024, 1026 (9th Cir. 2014) (“[A] ‘good
25 cause’ standard ‘applies to private materials unearthed during discovery[.]’”) (quoting
26 *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010)); *Foltz v. State Farm*
27 *Mut. Auto. Ins.*, 331 F.3d 1122, 1130 (9th Cir. 2003) (“Any [Rule 26(c)] order . . . requires
28 that the court’s determination ‘identify and discuss the factors it considered in its ‘good

1 cause' examination[.]'" (quoting *Phillips ex rel. Ests. of Byrd v. Gen. Motors Corp.*, 307
2 F.3d 1206, 1212 (9th Cir. 2002)).

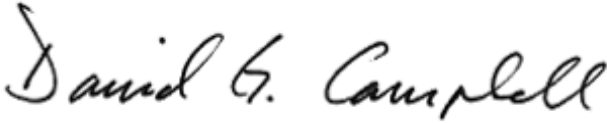
3 "For good cause to exist, the party seeking protection bears the burden of showing
4 *specific prejudice or harm* will result if no protective order is granted." *Phillips*, 307 F.3d
5 at 1210-11 (emphasis added); see *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476
6 (9th Cir. 1992) (holding that "broad allegations of harm, unsubstantiated by specific
7 examples or articulated reasoning, do not satisfy the Rule 26(c) test"). "If a court finds
8 particularized harm will result from disclosure of information to the public, then it balances
9 the public and private interests to decide whether a protective order is necessary." *Phillips*,
10 307 F.3d at 1211; see *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th
11 Cir. 2006) ("We reasoned in *Phillips* that when a district court grants a protective order to
12 seal documents during discovery, 'it already has determined that 'good cause' exists to
13 protect this information from being disclosed to the public by balancing the needs for
14 discovery against the need for confidentiality.'").

15 The parties' filing does not identify specific prejudice or harm that will result from
16 public disclosure of the unidentified business information. Doc. 40. Nor does it show good
17 cause for a protective order as required by Rule 26(c). See *Holtz v. State Farm Mutual*
18 *Auto. Ins.*, 331 F.3d 1122, 1133 (9th Cir. 2003) (noting that "a party seeking the protection
19 of the court via a blanket protective order typically does not make a 'good cause' showing
20 required by Rule 26(c) with respect to any particular document"); *Stevenson v. Holland*,
21 No. 1:16-cv-01831-AWI-JLT, 2021 WL 4318122, at *6 (E.D. Cal. Sept. 23, 2021) ("As
22 the Ninth Circuit has stated, a stipulated blanket protective order generally does not by
23 itself demonstrate 'good cause' for sealing specific information and documents.") (citing
24 *Kamakana*, *Foltz*, and *Beckman*).

25 The Court will not enter the proposed protective order without the required showing.
26 The parties should at a minimum identify specific categories of information they seek to
27 protect and provide a sufficient factual basis for the Court to engage in the scrutiny required
28 by Rule 26(c) and Ninth Circuit law.

1 **IT IS ORDERED** that the parties' proposed protective order (Doc. 40) is **denied**
2 without prejudice.

3 Dated this 27th day of November, 2023.

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7 David G. Campbell
8 Senior United States District Judge
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